

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DATE FILED: 6/6/2016

COLONIAL NAVIGATION CO. INC.,
individually and on behalf of
M/V PETALI LADY (IMO No. 9275402),

Plaintiff,

- against -

O.W. BUNKER & TRADING A/S,
SEARIGHTS MARITIME SERVICES PTE
LTD, and ING BANK N.V.

Defendants.

Case No. 15 Civ. 9204 (VEC)

**STIPULATION AND ORDER FOR DISCHARGE
AND DISMISSAL WITH PREJUDICE**

COME NOW Interpleader Plaintiff Colonial Navigation Co. Inc. ("Colonial Navigation"), individually and on behalf of M/V PETALI LADY (IMO No. 9275402) (the "Vessel") and Defendants O.W. Bunker & Trading A/S (in liquidation) (through trustee John Sommer Schmidt) ("O.W. Denmark") and ING Bank N.V. ("ING"), as Security Agent under a certain USD 700,000,000 Multicurrency Revolving Borrowing Base Facilities Agreement, dated as of December 19, 2013 and the related English Omnibus Security Agreement, dated as of December 19, 2013, each between ING Bank and Defendant O.W. Bunker & Trading A/S and certain of its affiliates (O.W. Denmark and ING together with Colonial Navigation and the Vessel, collectively, the "Parties"), filing their Stipulation and Order for Discharge and Dismissal With Prejudice, and would respectfully show as follows:

WHEREAS on November 23, 2015, Colonial Navigation filed the above-captioned Complaint in interpleader (Dkt. 1) seeking to deposit the amount of \$491,438.76 into the Court registry, constituting the principal amount invoiced by defendant-claimant O.W. Denmark in

connection with a fuel delivery to the Vessel operated by Colonial Navigation on October 17, 2014 (the "Fuel Delivery") as set out in the Complaint in interpleader, plus six percent (6%) constituting interest for one year pursuant to Supplemental Admiralty Rule E(5); and

WHEREAS this Court accepted jurisdiction over the interpleader action and Colonial Navigation did deposit such amount; and

WHEREAS on March 11, 2016, Defendant-claimant O.W. Denmark filed an Answer (Dkt. 32) disclaiming any interest in the interpleader funds by virtue of an assignment of its claims to ING pursuant to the English Omnibus Security Agreement, and also filed a Notice of Disclaimer of Interest and Request for Dismissal from the interpleader action. Dkt. 33. Plaintiff objected to the dismissal of O.W. Denmark at that time due to various outstanding unresolved issues (Dkt. 36). The Court denied the dismissal of O.W. Denmark without prejudice to renewal of the request (Dkt. 38); and

WHEREAS Colonial Navigation (on its own behalf and on behalf of the Vessel) and ING have executed a settlement agreement and release letter dated May 16, 2016 (the "ING Settlement Agreement") with respect to ING and Colonial Navigation's claims related to and arising from the Fuel Delivery; and

WHEREAS on April 29, 2016 Plaintiff was informed that defendant-claimant Searights Maritime Services Pte Ltd ("Searights") has been paid by one or more O.W. Bunker entities for the Fuel Delivery, and provided proof of payment, and therefore Searights does not have a claim against the interpleader funds on deposit. Searights has not appeared or filed an answer in this action and may be voluntarily dismissed by Plaintiff and the appearing parties pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii); NOW, IT IS HEREBY

STIPULATED AND AGREED, by and between the Parties hereto, that the \$491,438.76 on deposit with the Court's registry in this action be paid to Plaintiff Colonial Navigation's attorneys for return to Colonial Navigation; and it is further

STIPULATED AND AGREED, pursuant to Fed. R. Civ. P. 41(a), that the above-captioned action be and is hereby dismissed with prejudice and that the Restraining Order (Dkt. 12) and the Deposit Order (Dkt. 11) in effect be vacated, without attorneys' fees, costs, or expenses to any party; and it is further

STIPULATED AND AGREED, that Colonial Navigation and the Vessel are discharged from any direct *in personam* or *in rem* liability to O.W. Denmark and ING with respect to the fuel delivery which is the subject of the above-captioned interpleader action, and that such discharge shall be binding against O.W. Denmark and ING in this action and any future action, wherever filed; and it is further

STIPULATED AND AGREED, that this Stipulation may be filed without further notice and, for the purposes of filing this Stipulation, this Stipulation may be executed in counterparts, which, when taken together, shall constitute the entire Agreement, and that signatures by facsimile and electronic mail should be considered by the Court the same as original signature.

Dated: New York, New York
June 3, 2016

By: 

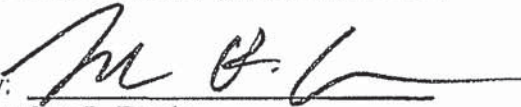
James H. Power
Marie E. Larsen
HOLLAND & KNIGHT LLP
31 West 52nd Street
New York, New York 10019
Telephone: 212-513-3200
Fax: 212-385-9010
Email: james.power@hklaw.com
marie.larsen@hklaw.com

By: 

Bruce G. Paulsen
Brian P. Maloney
SEWARD & KISSEL LLP
One Battery Park Plaza
New York, New York 10004
Telephone: 212-574-1200
Fax: 212-480-8421
Email: paulsen@sewkis.com
maloney@sewkis.com

*Attorneys for Plaintiff Colonial Navigation
Co. Inc., individually and on behalf of
M/V PETALI LADY (IMO No. 9275402)*

*Attorneys for ING Bank, N.V., as Security
Agent*

By: 

Jonathan L. Frank

Julie E. Cohen

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

Four Times Square

New York, New York 10036

Telephone: 212-735-3000

Email: jonathan.frank@skadden.com

julie.cohen@skadden.com

*Attorneys for John Sommer Schmidt as trustee
on behalf of O.W. Bunker & Trading A/S,
in liquidation*

SO ORDERED:

The Clerk of Court shall forthwith distribute the interpleader funds on deposit in this action in the amount of \$491,438.76 by check made payable to "Holland & Knight LLP as attorneys".

To the extent the funds on deposit have accrued interest, any additional amount shall be included in the check made payable to "Holland & Knight LLP as attorneys" for the benefit of Plaintiff.

SO ORDERED.



HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE

Date: 6/06/2016